

NOTICE

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2013 IL App (4th) 120764-U

NO. 4-12-0764

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 20, 2013

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
ANTONIO M. FLORENCE,)	No. 12CF166
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Steigmann and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The State failed to prove the offense of resisting a correctional institution employee because the State offered no evidence that the victim, a parole agent employed by the Illinois Department of Corrections, controlled or supervised incarcerated people.

¶ 2 A jury found defendant, Antonio M. Florence, guilty of resisting Keith Kinney, a correctional institution employee, an offense aggravated by the fact that Kinney suffered an injury as a result of defendant's resistance. See 720 ILCS 5/31-1(a-7) (West 2012). The trial court sentenced defendant to imprisonment for five years.

¶ 3 Defendant appeals, challenging the sufficiency of the evidence. Specifically, he argues the State failed to prove that Kinney was a "correctional institution employee" within the meaning of section 31-1(b) of the Criminal Code of 1961 (720 ILCS 5/13-1(b) (West 2012)).

When we look at all the evidence in the light most favorable to the prosecution, we conclude that no rational trier of fact could find Kinney to be a "correctional institution employee" within the meaning of section 31-1(b). Therefore we reverse the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5

The jury trial occurred in May 2012. The evidence tended to show that on February 2, 2012, three men went to an address on East Lincoln Avenue in Decatur to serve an arrest warrant on defendant. One of the men was Kinney, a parole agent for the Illinois Department of Corrections. The second was Adam Walter, a Macon County detective assigned to the United States Marshal's Fugitive Task Force. The third was Lorne Sturdivant, a Decatur police officer. They knocked on the door, calling out that they were the police. When no one answered, they went inside. No one was home. They were about to leave when they saw defendant approaching the house. He entered, and when he saw them, he tried to run. The three men grabbed him and yelled at him repeatedly that they were the police and he better stop struggling with them. Kinney told defendant, " 'Illinois Department of Corrections, you need to calm down.' " Nevertheless, defendant continued to struggle, and he and Kinney crashed through a screen door and onto the floor of the front porch. Kinney suffered a fractured knuckle. Defendant gave up after being shocked with a Taser.

¶ 6

The prosecutor asked Kinney:

"Q. How are you employed?

A. Illinois Department of Corrections.

Q. What are—how are you—what would you be—at least
this point and time, what would be the title of your employment?

A. My current title is parole agent.

Q. And do you have a special, uh, what are your duties?

A. I am assigned to the Fugitive Apprehension Unit for the Department of Corrections.

Q. Now, do you work from time to time with members of the U.S. Marshal[']s Office?

A. Almost daily.

Q. Do you know of a Lorne Sturdivant and Adam Walter?

A. Yes.

Q. How long have you worked for the Department of Corrections?

A. Twenty-one years in July.

Q. So you would be in theory a corrections officer, is that right?

A. Correct."

¶ 7 As defendant points out in his briefs, he was originally charged with resisting a peace officer (720 ILCS 5/31-1(a) (West 2012)). The information was amended twice and ended up charging defendant with resisting a correctional institution employee. Defendant admits in his reply brief that the parole agent was a peace officer under these facts, but defendant denies he was a correctional institution employee, because defendant was not in a place for the incarceration or custody of persons under arrest for violating parole.

¶ 8 During a jury instruction conference, the prosecutor moved to amend the

information so as to refer to Kinney as a "correctional institution employee" instead of a "correctional institution officer." The prosecutor wanted to use the precise term the statute used, thereby avoiding confusion. Defense counsel had no objection, and the trial court granted the motion.

¶ 9 In People's instruction No. 12 the trial court instructed the jury as follows:

"To sustain the charge of Aggravated Resisting a Correctional Institution Employee, the State must prove the following propositions:

First Proposition: That Keith Kenney [sic] was a Correctional Institution Employee; and

Second Proposition: That the defendant knew Keith Kenney [sic] was a Correctional Institution Employee; and

Third Proposition: That the defendant knowingly resisted the performance by Keith Kenney [sic] of an authorized act within his official capacity; and

Fourth Proposition: That the act of resisting the performance by Keith Kenney [sic] of the authorized act proximately caused injury to Keith Kenney [sic][.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that

any one of these propositions has not been proved beyond a reasonable doubt, you should the defendant not guilty."

(Emphases in original.)

¶ 10 In People's instruction No. 9, the trial court told the jury what a "correctional institution employee" was:

"The term 'Correctional Institution Employee' means any person who[] is employed to supervise and control inmates incarcerated in a penitentiary, State farm, or reformatory, prison, jail, house of correction, police detention area, half-way house, or other institution or place for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses, under arrest for an offense, a violation of probation, a violation of parole, or a violation of mandatory supervised release, or awaiting a bail setting hearing or preliminary hearing, or who are sexually dangerous persons or who are sexually violent persons."

This instruction quoted the definition of "correctional institution employee" in section 31-1(b) (720 ILCS 5/31-1(b) (West 2012)).

¶ 11 II. ANALYSIS

¶ 12 When a defendant challenges the sufficiency of the evidence, we look at all the evidence in the light most favorable to the prosecution and ask whether any rational trier of fact could find the elements of the charged offense to be proved beyond a reasonable doubt. *Jackson*

v. Virginia, 443 U.S. 307, 319 (1979); *People v. Siguenza–Brito*, 235 Ill. 2d 213, 224 (2009).

¶ 13 Defendant argues the State failed to prove an element of its case, namely, that Kinney was a "correctional institution employee" as defined in section 31-1(b). Defendant says there was no evidence that Kinney was employed to supervise and control incarcerated inmates. See 720 ILCS 5/31-1(b) (West 2012).

¶ 14 The State responds that as a parole agent for the Illinois Department of Corrections, Kinney controlled and supervised persons who were in violation of probation, parole, or mandatory supervised release and that he therefore met the definition of a "correctional institution employee." According to the State, "[i]t is not necessary that the inmate under the control and supervision of a correctional institution employee be incarcerated as defendant asserts."

¶ 15 On the contrary, controlling and supervising incarcerated persons is essential to the definition of a "correctional institution employee." The prepositional phrase "under arrest for an offense, a violation of probation, a violation of parole, or a violation of mandatory supervised release" modifies the preceding object of the preposition "persons," and "persons" and is part of a phrase describing a place of incarceration or custody. 720 ILCS 5/31-1(b) (West 2012). Using ellipses, we can simplify section 31-1(b) as follows: " '[C]orrectional institution employee' means any person employed to supervise and control inmates incarcerated in a penitentiary, *** or place for the incarceration or custody of persons *** under arrest for an offense, a violation of probation, a violation of parole, or a violation of mandatory supervised release ***." *Id.*

¶ 16 The record appears to contain no evidence that Kinney, in his job as a parole agent, controlled and supervised persons in a place of incarceration. Rather, it appears his job

consisted of controlling, supervising, or tracking down people who were not incarcerated.
Therefore the State failed to prove the charged offense.

¶ 17

III. CONCLUSION

¶ 18

For the foregoing reasons, we reverse the trial court's judgment.

¶ 19

Reversed.